



**TOWN OF HARPSWELL  
PLANNING BOARD MINUTES  
January 21, 2009  
APPROVED**

**MEMBERS PRESENT**

Joanne Rogers, Chair  
John Papacosma, Vice Chair  
Robin Brooks, Secretary  
Dorothy Carrier  
Roberta Floccher  
Debora Levensailor, Associate

**MEMBERS ABSENT**

**STAFF PRESENT**

Carol Tukey, Town Planner  
Melissa Moretti, Recording Secretary

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The Town of Harpswell Planning Board meeting, being duly advertised in the Brunswick *Times Record*, was called to order at 6:30 PM by Joanne Rogers, Chair. Introductions were made of Board members, and the Pledge of Allegiance was recited.

The Chair read the Agenda and explained the hearing process and procedures for Planning Board meetings. She stated that the workshop for the Planning Board would be addressed after "New Business" on the Agenda.

**CONSIDERATION OF MINUTES**

The Chair asked for a motion to accept the November 19, 2008 Minutes as printed; it was seconded, and there was unanimous approval of the Minutes, as printed.

**SITE VISIT**

The Chair stated that she had attended the site visit on Tuesday morning, January 20<sup>th</sup>, along with Ms. Carrier, Mr. Brooks, Mr. Papacosma and Ms. Tukey, the Town Planner. They visited the Great Island Boat Yard in Harpswell, and the Hutchins property at Land's End, Bailey Island. (A site visit was previously held at the property of Sharon Johnson and also the property of Donald & Marie Toussaint.)

The Chair addressed the audience and said if there was anyone present for the Ronald Hutchins (Applicant), Edgar Hutchins & Howard Hutchins (Owners), public hearing for rezoning of Tax Map 20 Lots 54/56/58/60, that the application had been withdrawn. She then read a letter that had been distributed to the Board members that stated the Applicant and Owners wished to withdraw their application, and stated the reasons why. [A copy of this letter can be found in the file kept in the Planning Office.]

**OLD BUSINESS**

**Workshop for Planning Board Offered Shoreland Zoning Ordinance Amendments.** [This issue to be discussed later on the Agenda.]

**NEW BUSINESS**

**08-11-02 Sharon Johnson (Owner/Applicant), Public Hearing for Rezoning of Tax Map 17 Lots 36 & 38 from Shoreland Residential to Shoreland Business, Malcolm Drive, Harpswell**

Sharon Johnson addressed the Board, and explained that her rezoning request was in order to have a business, such as a gift shop, on the property at a later time.

The Chair asked if there was public comment; there was none. The Chair then asked for comments from the Board.

Ms. Carrier reminded the Board that there had been a site visit to the property previously (for the November Planning Board meeting), and it was obvious that the location would be "continuous" to that kind of zoning

change. She made the motion that Ms. Johnson's request for rezoning be approved as an item on the Warrant for Town Meeting. The motion was seconded, and approved unanimously by the Board.

**08-12-01 Donald & Marie Toussaint (Owners), Robin Edgecomb (Applicant), Reconstruction of Non-Conforming Structure, Tax Map 45 Lot 92, 39 Guss Gully Road, Harpswell.**

The Applicant and Owners were not present; the Chair moved the item to the end of "New Business" on the Agenda, to await the participants.

**09-01-01 Great Island Boat Yard (Applicant), Stephen Rowe (Owner), Site Plan Review, Tax Map 48 Lot 48, 419 Harpswell Islands Road, Harpswell.**

The Town Planner had distributed to the Board a copy of an e-mail she had received earlier from Mr. Rowe regarding the archeological resources that may/may not be present at the site. [A copy of this e-mail can be found in the file in the Planning Office.]

Steve Rowe addressed the Board. He stated that he and his wife, Stephanie, owned the Boat Yard; they live on Tondreau Point, just across from it. They were before the Board to request approval to build a boat shop and a marina office to replace the original building which was lost in a fire on November 9, 2008. He stated that the cause of the fire was a battery operated computer backup device by APC, and suggested that anyone listening investigate the APC website, since there had been several recalls of that device.

John Libby, their builder, was also present in the audience. Mr. Rowe said that the new construction would be a post and beam design, and referred the Board to their packet materials. He stated that it had a traditional look, was energy efficient, and also complied with all ordinances on the local and State level. He reiterated that they were before the Board because they were anxious to begin construction so they could open in the Spring, which was important for their customers. He said that, after the approval process of the meeting, they would like permission from the Board to pour the concrete footings over the upcoming weekend, due to a favorable break in the weather.

The Chair stated that there had been two questions which had come up during the site visit: 1) the historical and archeological resources which had evidently been answered by the memo distributed by the Town Planner, and 2) the storm water management issue.

Mr. Rowe addressed the storm water management issue and explained that the Boat Yard took the issue "very seriously", as part of their Clean Marina Program, which he described. He said he had visited the DEP website which listed "best management practices" for storm water runoff and, specifically one that addressed roof drains. He described the recommended filtration practice, and then explained how they would utilize a similar process in their reconstruction project. He said that the bulkhead on the guttered east side would be backfilled with 1 in. to 3 in. of crushed stone (a large reservoir of filtration media), and that side would drip down directly into the crushed stone underground. On the west side, they would add a buffer between the building and the ramp which would channel down into the crushed stone used in the backfill of the foundation, and into the foundation drains.

The Chair asked if there were any other questions/concerns regarding the storm water runoff issue; there were none. She asked for comments from the audience; there were none.

The Chair then addressed the "Findings of Fact" of the Town Planner's memorandum, the "Applicable Shoreland Zoning Ordinance Standards", §15.2.1.1 through §15.2.4. The standards of those sections were met.

Under "Site Plan Review Ordinance", §15 "Approval Standards and Criteria", §15.1.1 through §15.21 – the standards of all sections were met. §15.9 "Stormwater Management" and §15.19 "Historic and Archeological Resources", the only concerns of the Board, had been addressed by the Applicant to the satisfaction of the Board.

Ms. Levensailor, also a member of the Harpswell Energy Task Force, commended the Applicant/Owners for their use of energy efficient lighting on the project, and also for using their best efforts to achieve the EPA's Energy Star Certification for energy efficiency on the entire project.

The Chair moved to approve the application with the standard conditions of approval and the additional conditions of approval. The motion was seconded. The Town Planner suggested the motion be amended to also state that the Applicant followed the DEP's criteria for best management practices as stated in his testimony. There was no further discussion/comment, and the project was approved by all Board members.

Mr. Rowe asked the Board about the possibility of beginning construction of the project over the weekend, due to weather concerns. He stated that he had obtained a Land Use Permit from the Code Enforcement Office. The Town Planner said she would write the Notice of Decision that could probably be done by Monday; regardless, she would begin the process soon. Mr. Rowe asked if it would be possible for them to pour a footing on Friday or Saturday, because the following week, the tides would move to the middle of the day.

Ms. Tukey asked the Board if they would allow any construction prior to the signing of the Notice of Decision. The Chair moved to allow for construction to begin before the Notice of Decision was signed. The motion was seconded, and passed unanimously.

The Town Planner suggested that Mr. Rowe inform the Code Enforcement Officer of the Planning Board's decision to allow construction to begin over the weekend.

The Chair clarified with the Town Planner that the Toussaints and their representative had been notified of the Planning Board meeting. Since they were not present, the Chair opted to continue on to the next Agenda item.

### **Workshop for Planning Board Offered Shoreland Zoning Ordinance Amendments**

The Town Planner referred the Board to their packet materials, and discussion ensued regarding the 30% expansion rule. She made the Board aware of several options used by other Towns, i.e. limit the height of the basement so it was, effectively, a crawl space; one Town does not allow expansion at all; some towns use a less than 30% expansion rule (one town used 25%). It was clarified that the expansion rule included the basement. There was discussion regarding what the intention of the rule was. The Town Planner clarified that the Board was agreeable to the 30% expansion rule, and they just wanted to have the wording of §10.3.1.1 "Further Limitations" state the calculation specifically: "...including, but not limited to, basements, by 30% or more, ..."

Ms. Floccher suggested a note of explanation after the statement: "Such 30% shall include all expansions contemplated, including but not limited to, foundations."

Selectman Jim Henderson, from the audience, clarified whether crawl space had been considered part of the volume calculation previously. The Board stated that, at present, the crawl space was not considered as part of the calculation. Discussion ensued regarding the description of "crawl space" as usable space. It was decided that the calculation would be (for an 8 ft. basement): 8 ft. x the sq. ft. of the basement, and that would be considered additional volume. The Board said their intention was to write the verbiage for a full basement.

The Town Planner told the Board that there would be a public hearing with the Selectmen on Monday, February 9, 2009 to decide the items that would be on the Warrant for the Town Meeting on March 14<sup>th</sup>. She clarified that the issue had been presented to them as a “workshop” on the meeting’s Agenda, and that the public hearing for the issue would be on February 9<sup>th</sup>, when it would be necessary to have the ordinance amendment already written.

The Chair postponed discussion of the issue until later in the meeting, and returned to the matter of Donald and Marie Toussaint under “New Business”. She moved to postpone their hearing indefinitely; the motion was seconded, and the Board agreed unanimously to postpone the Toussaint matter until a later date.

## **OTHER BOARD BUSINESS**

### **Consideration of Planning Board exercise of jurisdiction over applications(s) pursuant to Site Plan Review Ordinance §16.4 and/or Shoreland Zoning Ordinance §10.3.2.3.**

There were no jurisdictional issues to discuss.

## **Town Planner’s Updates**

The Chair asked the Board if they had read the handout provided by the Town Planner at the beginning of the meeting. The Chair moved that the Board accept the Letter of Credit and the cost estimate for the eventual removal of the improvements from Tower Specialists, Inc. (“TSI”); the motion was seconded.

The Town Planner asked for discussion regarding engineering review and a cost escalator. She explained that other towns have their engineers review the cost estimate to confirm that it is comparable to present day engineering standards and costs. She was informed that their estimates were \$15,000 to \$25,000 for reclamation of the property, i.e. take down the tower, remove the concrete base and reloom and reseed the entire site. She also asked the Board if they wanted a “cost escalator” built in. Allowing for an inflation rate increase of 3% per year, compounded, in about 20 to 25 years when the tower would be taken down, the cost would run around \$27,000. She asked the Board if they wanted those two issues added in to the process.

The Chair asked Selectman Henderson if he had any input. He agreed that the escalation issue would make sense. He asked for clarification regarding engineering review, and the Town Planner said that the engineer would look at the costs provided to confirm they were in line with today’s costs.

There was discussion among the Board, and Ms. Carrier confirmed that the prices quoted were today’s prices (by her experience). She also said that deconstruction may be more in some towns due to location, etc.

The Chair asked if it would slow the project again if an escalator clause was added. The Town Planner said that anything added on would slow down the project, even if it is by the Ordinance. She explained that, if the Board wanted to add an escalator clause, it could be negotiated using the industry standard, the “CPI” (Consumer Price Index).

Ms. Floccher asked if the salvage value of the steel (when the tower was torn down) went to the Town. She said that deconstruction should be addressed clearly, i.e. the costs associated with disposing of scrap metal, etc. The Board referred to their handout from TSI. The Town Planner said that the introductory information in the handout would not be in the contract, only the figures. There was discussion regarding the fact that the bank would honor the Letter of Credit should TSI go out of business and the Town had to deconstruct the Tower.

The Chair asked the Town Planner what was required of the Board; she said they needed to approve the form of surety for the Letter of Credit; make a recommendation toward the engineering review of the cost estimate;

and/or make a recommendation on the cost escalator (which would be reviewed by the Town Planner, the Deputy Town Administrator and the Town Administrator). She reiterated that Ms. Carrier had knowledge of engineering costs that confirmed the stated estimates were viable.

Selectman Henderson clarified with the Town Planner that the Letter of Credit had no dollar figure, at present. The Town Planner stated that there had been an estimate in today's dollars, and were trying to decide what the dollar amount would be in "future dollars".

The Town Planner said that the Town Attorney had recommended peer review engineering and a clause that allowed for future dollar amounts, and would leave the decision up to the Planning Board.

Ms. Floccher moved that the Board "accept the Letter of Credit and the value of the accompanying estimate subject to, and including an adjustment for future dollars based on costs at the time of actual deconstruction, and insertion of the appropriate expiration date for the Irrevocable Letter of Credit." The motion was seconded.

The Board clarified that the Letter of Credit was an "insurance policy" in case TSI ever went out of business.

Ms. Floccher amended the motion to state "to include language based on legal review and input that addresses future costs or applicable indices to reflect actual costs at the time of deconstruction," in order for the Town's Attorney to make the final determination. The motion was seconded; there was no further discussion. The motion was unanimously accepted by the Board, as amended.

It was clarified that the engineering review had been waived by the language of the first motion.

### **Public Hearing for State Mandated Shoreland Zoning Ordinance Amendments**

Ms. Carrier voiced concern about having a public hearing incorporated into a Planning Board meeting, which was shared by Ms. Levensailor.

There was discussion about whether the Board had to accept the State mandated changes, and the Town Planner explained to the Board that they had three choices in the section regarding timber harvesting standards: 1) they could repeal the wording in that section, add in their wording and adopt those changes and let the State handle permitting, 2) the Board could accept their choices verbatim, and the Town would have a memorandum agreement with the Department of Forestry for assistance in enforcement and professional help, when/if needed, or 3) continue with the current standards, and the Town would accept, and pay for, everything having to do with the enforcement. She said the Selectmen had selected the second option – to adopt the changes verbatim, etc. and that the current draft of the proposed ordinance amendment reflected that. It was clarified for the Board that the State would be responsible for hiring the professional help, not the Town, and at no cost to the Town.

There was further discussion regarding public hearings, with specific regard to ordinance changes and the Board's concerns about the public's awareness of a public hearing matter. The Town Planner said that this was the third workshop for the Planning Board regarding the issue of the State mandated changes. She reiterated that, if the Town did not vote for any of the ordinance changes, the State would "create" an ordinance for the Town. She also explained that she had put explanations for the changes in the margins of the draft of the proposed ordinance.

The Board was of the opinion that the proposed changes to the draft ordinance should be voted on at Town Meeting on March 14<sup>th</sup>, and the Board could discuss them afterward. Selectman Henderson wondered if there

would be time to make changes after the public hearing on February 9<sup>th</sup>. Ms. Tukey said there was no time to make substantive changes, only minor grammatical changes. The Town Planner suggested that, if the Selectmen wanted to make substantive changes to any proposed ordinance, they would hold public hearings meetings in December in order to begin the process, i.e. make the changes, have the board or committee agree on the wording, hold a public hearing, and readvertise it. She said her usual timeframe would usually begin six months before the Selectmen wanted it adopted.

The Chair said the Board had a choice of whether they wanted to look at the 30% rule. She said that, even though Selectman Henderson was the only person in the audience, it should be considered that the Board had held the public hearing on Technical Amendments to the Shoreland Zoning Ordinance. She then closed the portion of the hearing regarding State mandated changes to the Shoreland Zoning Ordinance Amendments, and reopened the Planning Board workshop regarding the amendment they wanted to make for the ordinance.

The Town Planner asked the Board to vote on the recommendation to make it a Warrant Article. She explained that there should be two ordinances, so they could be voted on separately at Town Meeting. She said there should be two Warrant Articles, one to vote on the State mandated ordinance amendments, and another Warrant Article to vote on only the Planning Board's proposed amendments (the 30% expansion rule).

Ms. Floccher moved that the State mandated amendments be put on the Town Warrant for the next Town Meeting, as recommended by the Planning Board. The motion was seconded.

The Chair clarified that the Board would accept the ordinance amendments as mandated by the State, and then recommend one that was stricter. The Board agreed that §10.3.1.1 "Further Limitations" under §10.3 "Non-Conforming Structures" was the change they would be considering, and would also include the basement, which was an issue not addressed by the State.

The Board accepted the motion unanimously.

The Chair confirmed with the Town Planner that there were no other items on the Agenda, and then continued with the Board's proposed language to the amendment. The Town Planner said that the Board should continue the meeting as a workshop, but have it left open to the public.

There was continued discussion regarding the meaning of §10.3.1.1. The Board read pages one, two and three of their handouts. It was decided that there was a misprint in their handout, and that §10.3 "Non-Conforming Structures" was actually meant to be §10.3.1 "Non-Conforming Structures". The wording of §10.3.1.1 was also discussed.

Selectman Henderson asked the Town Planner if, in fact, the Planning Board had to create the new wording, or if the Town's attorney could draft it; they could just propose the policy they wanted. The Town Planner said that what the Board wanted was clear, and that it could be written for presentation at the February 9<sup>th</sup> public hearing, and would also be online. She also said that the State mandated ordinance had been on-line for three months, and she continually revised the on-line version to reflect the most recent changes. The Chair confirmed that the Town Planner would e-mail the Board the changes discussed so they would be familiar with them for the February 9<sup>th</sup> public hearing.

A motion was made to adjourn, which was seconded.

The meeting adjourned at 8:32 PM.

Respectfully Submitted,

Melissa Moretti  
Recording Secretary